

**REMARKS**

Applicants respectfully request reconsideration of the instant application in the view of the aforementioned amendments and the following remarks. Claims 98-111, 113-125, 127-137, 139-150, 152-165, 167-179 and 181-182 are currently pending in the instant application. By this Amendment, Applicants have added new independent claim 182. Applicants have further amended claims 165 and 179 in response to the Examiner's objections.

**Claim Objections**

Applicants wish to thank the Examiner for pointing out the errors in claims 165 and 179, and have amended these claims in accordance with the Examiner's suggestion.

**Official Notice**

The outstanding office action makes extensive use of Official Notice in rejecting Applicants' instant application. In the instant action, the Examiner appears to indicate that since Applicants did not comment on every Examiner statement in the June 2, 2003 action (whether or not the Examiner took official notice in that statement), somehow each of those Examiner's statements (in the June 2, 2003 action) is now deemed admitted prior art. The instant office action delineates several pages of now purportedly "admitted prior art", despite the fact that in most instances this is the first time the Examiner has apparently taken official notice of each of the statements. Applicants note that the June 2, 2003 made reference to Official Notice in several instances, not for several pages. It is therefore unclear what the Examiner is actually taking Official Notice of. If the Examiner indeed intends to take Official Notice of every statement on pages 4-7,

Applicants respectfully request that the Examiner clarify this fact, so that Applicants are given an opportunity to challenge this assessment.

Applicants respectfully submit that it is simply improper to compile a laundry list of purported admitted statements, particularly when official notice appears to have been taken for the first time (in most instances) in the March 15, 2004 office action and particularly when a large portion of the list is not even applied in the office action. Applicants note that MPEP 2144.03 is quite clear in that Official Notice is to be used “in limited circumstances”. “While ‘official notice’ may be relied on, those circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113”. (Emphasis added). Applicants respectfully submit that a three page laundry list of items is simply an inappropriate use of “Official Notice”, if that is what the Examiner has intended. This list of items further includes analysis of cited references, and the like. It is unclear which statements on pages 4-7 are Examiner argument and which represent actual instances of “official notice”. Reconsideration and clarification of the Examiner’s position in this regard is respectfully requested.

Pending the Examiner’s clarification of this issue, Applicants reserve the right to request documentary evidence in support of certain of the Examiner’s positions, in accordance with MPEP 2144.04(C).

### **Rejections under 35 USC 103**

The Examiner has rejected each of the pending claims in view of three references to Greenberg, Koepper, Elliott, and extensive use of Official Notice. Applicants respectfully submit that the cited references fail to disclose or suggest a number of features recited in the

instant claims. The Examiner concedes that the cited references fail to disclose a number of features, but relies extensively on Official Notice to reject the claims. Applicants respectfully submit that the Examiner's reliance on Official Notice highlights the fact the cited references clearly fail to disclose or suggest the features of the pending claims.

As previously noted, among the various features which are not disclosed or suggested by the cited references, Applicants note that the instant claims call for a method and system in which a conditional purchase offer including an offer price is received from a customer utilizing a web page for purchasing travel services, a payment identifier is received specifying a financial account for use in providing guaranteed payment for said travel services if said conditional purchase offer is accepted, and after receiving the conditional purchase offer and payment identifier, a comparison is made between the offer with seller inventory and pricing information stored on a central reservation system to determine if the conditional purchase offer is acceptable. If the offer is accepted, the customer (via the payment identifier) is charged the offer price, thereby providing full payment for the travel services. By receiving the payment identifier (which is used to guarantee payment for at least the amount of said offer price for the travel services if the offer is accepted) prior to considering the offer, the system is clearly targeted to users who will submit only serious (binding) offers.

In response to certain of Applicants' prior arguments, the Examiner noted that "the features upon which applicant relies (i.e., a 'full payment . . . is not guaranteed in any way' and b 'if the offer is accepted, the customer (via the payment identifier) is charged the offer price, thereby providing full payment for the travel services') are not recited in the rejected claim(s)." In response to the Examiner's concerns, Applicants have previously amended each of the independent claims to recite that the payment identifier is used to specify a financial account for

use in providing guaranteed payment for at least the amount of said offer price for said travel services if said conditional purchase offer is accepted.

In addition to a number of items which the Examiner agrees that Greenberg fails to disclose, Greenberg simply does not disclose or suggest providing a payment identifier to provide guaranteed payment for at least the amount of an offer price for travel services if said conditional purchase offer is accepted. In addition, according to the Examiner, “Airlines would then review the bids and pick the ones they wanted to accept”. This however fails to disclose or suggest the claimed system accepting an offer on behalf of the seller. Accordingly, Applicants respectfully submit that the cited references fail to disclose or suggest all of the features of any of the pending claims.

The remaining references fail to cure the deficiencies of the primary reference in this, and other, respects. As acknowledged by the Examiner, “the Koepper reference does not disclose how payment is carried-out.” As such, the Koepper reference very clearly fails to disclose or suggest any system in which a payment identifier is received from the customer prior to consideration of an offer. The Elliott reference also falls short in this regard, as well as others.

While credit cards (and other payment identifiers) existed prior to Applicants’ application, there is simply no suggestion or teaching in the prior art to use a payment identifier in Applicants’ claimed method and system to achieve a buyer-driven commerce system in which only bona fide buyer offers are considered by the system. As such, Applicants respectfully submit that the mere existence of credit cards prior to Applicants’ filing date completely fails to disclose or suggest Applicants’ claimed invention (as defined by each of the independent claims.)

There is simply no suggestion in the cited references for “providing a payment identifier

specifying a financial account for use in providing guaranteed payment for at least the amount of said offer price for said travel services if said conditional purchase offer is accepted”, as recited in amended independent claim 98 (and similarly claimed in other independent claims).

In addition to these reasons, Applicants further note that the claimed invention, as embodied in the services of assignee priceline.com, has achieved significant commercial success, thereby providing further support of the non-obviousness of Applicants’ claimed invention. Despite the purported teachings of the cited references, and the Examiner’s position that missing features within the cited references are cured by extensive use of Official Notice, priceline.com has received and processed millions of conditional purchase offers through its website. Applicants respectfully request that the Examiner consider this information in support of the non-obviousness of Applicants’ claimed invention. Applicants are in the process of organizing materials in support of their position that the instant invention has achieved significant commercial success, and will submit these materials in support of Applicants’ application.

Applicants further note that newly presented claim 182 clearly delineates an order-of-operation which is neither disclosed nor suggested by the cited references.

Accordingly, Applicants respectfully submit that each of the pending claims are in condition for allowance.

The Examiner is invited to contact Applicants’ undersigned representative to discuss any issues which may advance the prosecution of the instant application.

**AUTHORIZATION**

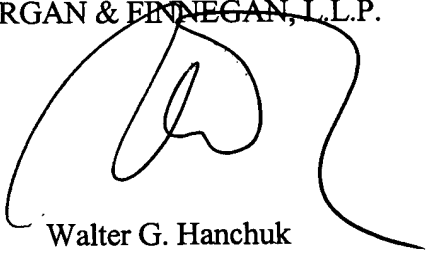
The Commissioner is hereby authorized to charge any additional fees which may be required for this amendment, or credit any overpayment to Deposit Account 13-4500, Order No. 3553-4020US3. A DUPLICATE OF THIS DOCUMENT IS ATTACHED.

Respectfully submitted,

MORGAN & FINNEGAN, L.L.P.

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By:



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